

DELAWARE CRIMINAL BACKGROUND AND CHILD PROTECTION REGISTRY CHECKS TASK FORCE

June 12, 2014

9:00 a.m.

**2nd Floor Senate Conference Room, Legislative Hall, Dover, DE
MEETING MINUTES**

In Attendance:

The Honorable Stephanie T. Bolden, House of Representatives
David Mangler, Director of DPR for Secretary of State
Tania Culley, Office of the Child Advocate
Ralph Davis, Delaware State Police/SBI
Karen DeRasmo, Prevent Child Abuse Delaware
The Honorable Joelle Hitch, Family Court
Brendan Kenneale, DAIS
Ellen Levin, Child Protection Accountability Commission
The Honorable Ernesto Lopez, Senate
The Honorable Karen Peterson, Senate
Jim Purcell, Communities in Schools
Cabinet Secretary Jennifer Ranji, DSCYF (Chair)
Angeline Rivello, DOE
Wayne Smith, Delaware Healthcare Association
The Honorable Stephen Smyk, House of Representatives
Janice Tigani on behalf of Patricia Dailey Lewis, DOJ
Lisa Robinson on behalf of The Honorable James T. Vaughn, Jr., Superior Court
Dawn Williams on behalf of Lisa Minutola, Public Defender

Members of the Public:

Sandy Reyes, OMB
Cara Sawyer, DSCYF
Kelly Schaffer, DSCYF (consultant)

1. Welcome and Introductions

The meeting began with introductions. The group next turned to the meeting minutes from the April 29, 2014 meeting. The minutes were approved. Secretary Ranji then gave a brief overview of what will be discussed at the meeting.

2. Background Checks for 2014 Summer Camps

Secretary Ranji provided an update on the summer background record checks process. After the last meeting, DSCYF issued an emergency regulation requiring that background checks be conducted for camps operating this summer. A notice was sent to all camps for which DSCYF had information on file. Forms the camps would need to complete and submit for processing were sent as well. All camps were required to have Delaware background checks run for their staff (not fingerprinting). As of a week and a half ago, only 80-85 forms had been received. DSCYF and DELJIS made calls to camps to follow up. At last report, paperwork for 250 individuals had been submitted for background checks. The summer camp background check process will give the Task Force a good baseline from which longer-term recommendations can be made. Additional measures were also put in to place for planning. Questions were added to the camp permit form asking about the number of employees and if the camp is obtaining background checks on their own. Camps are operated by different entities and we continue to put measure into place to ensure safety for kids. DSCYF will keep the Task Force informed as new information arises.

3. Current Background Check Requirements and Inconsistencies

Secretary Ranji acknowledged that Cara Sawyer and Kelly Schaffer created a chart to help illustrate background check requirements and inconsistencies. The document is dense and she handed it over to Cara Sawyer to walk the group through the chart. The information presented was at a “30,000” foot-level and intended to be a springboard for future discussions.

Cara Sawyer presented the “Current Background Check Requirements and Inconsistencies” document. She acknowledged that the document is a distilled down version, with the goal of highlighting the main points. The chart will continue to evolve. The first category Ms. Sawyer presented was Child Care / Department of Services for Children, Youth and Their Families (DSCYF) and she described the following:

- Court Appointed Special Advocates (CASA) - Background checks are required, but the statute does not specify how the checks are done. There are also no statutory prohibitions specified based on what the checks reveal.
- Child care personnel – This widely used term also includes contractors, volunteers of DSCYF, those working in residential child care facilities (not day care), including 24 hour care facilities that DSCYF and the Department of Education (DOE) contract with, as well as foster and adoptive parents. More intense prohibitions are specified for this group, including restrictions if a person is on the Child Protection Registry at Level III or IV or has been convicted of any offense at Level IV for seven years after the conviction.
- Persons seeking employment at child care facility – This category is described as those having regular, direct, access to children. This includes family child care providers (those providing licensed care in their home). Ms. Sawyer provided the example of a child care provider who offers services in her home. The provider’s spouse would be required to have a background check because of regular, direct access. Prohibitions mirror that for child care personnel. A question was raised about whether or not juveniles who may be working of volunteering at a child care facility (or through their high school / internship) would be required to have checks. Juveniles would not be required to have checks because they are under age 18. The group agreed to revisit this scenario to better understand potential impact.

Secretary Ranji reminded the group that there is great variation from category to category and in the specificity about which crimes result in prohibitions. Today we are looking more at the variation and the group will eventually decide if they want to make recommendations across the board for prohibitions or leave it to differ based on where individuals are working. A question was raised about whether or not applicants to a job are required to check a box disclosing their criminal history. The group acknowledged there may already be an exception for child care and school districts. Secretary Ranji stated that the department would look into the question. Cara Sawyer continued the overview by presenting the following:

- Camp employees, owners, operators and volunteers –As mentioned earlier in the meeting, a new emergency regulation was put into place to require background checks for this group. The regulation will be active for 120 days and will not be in place for next summer. Some camps – such as summer religious programs, programs where parents are there, or open door activities – are exempt from requirements. Jim Purcell, Communities in Schools in Delaware, asked if the exemption applies to 21st Century Learning Centers. Ms. Sawyer and Ms. Tigani gave their opinions that if a school operates the program then it would be exempt, as camps operated by public and private schools are exempt.

Ms. Sawyer next summarized information related to employees in the Education sector.

- School bus drivers – School bus drivers are required to have fingerprinting for state and federal background checks, a Child Protection Registry (CPR) check, as well as a drug test. DOE is also permitted to adopt and enforce regulations regarding the design and operation of school busses.
- Student teachers – Fingerprinting and CPR check are required. Student teachers cannot teach if a school's policy would prohibit someone with that same background from working there.

- Charter school board members and founders – Fingerprinting and CPR check are required. Persons are disqualified if they have a felony offense or crime against a child.
- School employees – This category includes student teachers as well as charter school teachers, and anyone in the public school setting providing a direct service to the children, including volunteers. A question was raised about what happens if an immediate need arises for a contractor and the time-sensitiveness does not allow a background check. An example was provided of someone having to come fix something inside the school. Ms. Sawyer responded that the key consideration would be direct access to children. If the contractor does not have direct access then a check would not be required. Ms. Sawyer stated that applicants “may” be disqualified based on prohibitions but it is up to the school district. Feedback was provided that some districts allow applicants to explain their criminal history, others automatically take away the employment opportunity; it depends on a specific school’s policy. A suggestion was offered to look at the impacts on licensure and match those requirements up with the prohibitions. Angeline Rivello, DOE, stated that there is interest from DOE in looking at how restrictions tie into licensure.
- Private school employees – There are no requirements by the state for background check. It is up to the school whether or not to conduct checks. A question was raised about whether a matrix exists that describes public school background check requirements and prohibitions that could be shared with private schools. Feedback was provided that if such a tool exists it would be helpful to share with public school districts as well. Secretary Ranji responded that a child care matrix exists (though not one for public schools), and she can bring it back to share with the group.

Ms. Sawyer began to describe requirements for those in the Healthcare category.

- Home health agency employees – Fingerprinting and drug screens are required. Employment is denied if within 15 years, a person has been convicted of abusing, neglecting or mistreating a resident of a facility, or an adult who is impaired. Other prohibitions apply.
- Ambulance attendants and EMTs – Fingerprinting for federal and state checks is required. A waiver can be submitted to the board for some crimes.
- Community-based attendants – Statute describes criminal checks being required, as well as checks of abuse, neglect, mistreatment and financial exploitation registries. However, statute does not specify what those checks are.

4. Current Background Check Requirements for those licensed by the Division of Professional Regulation

David Mangler, Director of the Division of Professional Regulation (DPR), presented to the group on Healthcare background check requirements in Title 24. Mr. Mangler stated that Title 24 has 55 chapters and there are some inconsistencies. 11 chapters under the DPR umbrella provide authority for boards to require both state and federal background checks done through SBI. Twelve years ago, Senator Peterson helped require specific language in 24 statutes establishing requirements for every board to identify substantially related crimes. Examples for nursing and plumbing were provided in a handout. If an individual is seeking licensure/renewal of a license and they have a conviction for a crime substantially related to a profession or trade, then a provision allows the board to make a waiver if the individual has met certain criteria. When a crime appears in an applicant's history the board can ask the applicant for more information to see if they meet the criteria for a waiver. At least 5 years have to have passed from the crime in order for a waiver to be awarded. Misdemeanors may be less than 5 years. A matrix provided in the handout lists all chapters and whose authority each falls under. A

question was raised about how probation before judgment (PBJ) is handled. Mr. Mangler responded that it is not considered a guilty plea. He described that it is not unusual to see expunged information still listed in a person's background report, including things settled through PBJ. Individuals are able to re-establish their records to help move a waiver through in these instances.

Mr. Mangler went on to describe that of the 14 chapters that don't require background record checks, five of them are included in Senate bill 98 to now require checks. A question was raised about which occupations are being added. Mr. Mangler provided a few examples, such as optometrists and physical therapists. Of the 9 chapters not included in Senate bill 98, a few examples are veterinarians, land surveyors and barbers. Secretary Ranji asked to confirm that until now there was not a requirement for physical therapists. Mr. Mangler responded that was correct, however, there was a requirement for those seeking licensure to attest to whether he or she had a criminal history. DPR had limited records on those that had attested. He continued to describe that nurses have been considered the largest migrant population, moving across borders from state to state. A follow up question was raised about whether or not there is any way to pick up international crimes. Mr. Mangler's response was that there is not. Ralph Davis from SBI confirmed that they do not have relationships with other countries to share background information.

Senate bill 98 also requires that those in existing positions get fingerprinting. The exception is nursing because of the volume of nurses in the state. The five groups included in Senate bill 98 will cause an increase in about 4,600 additional pieces of work (new applicants per year, based

on projections) for SBI. Including people already employed would be an even larger increase. An amendment was made to the bill to extend the date from January 2015 to January 2016 for when the checks need to be complete. The amendment was made due to the workload issue for SBI. A question was raised about whether the changes included in the bill are supported by industry. Mr. Mangler responded that the boards know the change is coming. A follow up question was asked if there are requirements for re-checks. Senate bill 98 removes the requirement for a re-check after 10 years. The requirement is not needed since notification will be triggered if something new comes up after fingerprinting.

A question was raised about if and how foreign applicants would have background checks from other countries. An example was given of camp employees who have not been in the United States for a long time. The group agreed this is something to explore in greater detail. There are ways to confirm education credentials for example, but this is a different scenario.

5. Continuum of Background Check Options

Secretary Ranji presented a list of actions the Task Force may take to help improve the system of background record checks in Delaware. The first option is to prohibit individuals having certain criminal convictions from working in a position with unsupervised access to children. Another option presented was that entities (for example, camps) could be required to notify parents that they don't require background checks. Next, some level of checks may be required, but without specific prohibitions. And lastly, specific background record checks may be required and with certain prohibitions. Between the last two items is where the Department's action with summer camps would fall. Secretary Ranji asked if any task force members have thoughts about other options that may be considered.

A question was raised about how shelters that provide services to children would be covered. Cara Sawyer responded that it would depend on the services they offer. Feedback was provided that there can be situations in which there are suspicions about an individual, but they do not have a criminal conviction that would prohibit them from working with children. The Child Protection Registry provides the ability to substantiate an individual based on a non-criminal investigation by DSCYF, but the Registry only includes individuals who have actions against their own children (and not other children). It would be a significant change to include individuals more broadly. In fact, this issue of creating an extra familial child protection registry or expanding the current registry to include extra familial individuals who may not have been criminally convicted is one of the few issues outstanding from Dean Ammons' report on the Earl Bradley case. The group discussed the issue of employees moving from community to community or state to state. This issue also applies to private schools, where background checks are not required. Some private schools are doing checks, but it is questionable if they are comprehensive. A question was also raised about how clergy might be included in background check requirements. An example was provided about how priests who were under suspicion have left their positions to go to other states as teachers.

A suggestion was provided that rather than asking camps to tell parents that they do not do background checks, to request that those who do checks tell parents. Camps and private schools may be responsive to this best practice recommendation. It was also noted that if background checks are going to be required then the nature of the check needs to be specified. Ellen Levin, Child Protection Accountability Commission, stated that she thinks parents would be surprised to

learn that private schools do not have background check requirements. The parent education component is similar to Delaware Stars (child care quality rating and improvement system). Secretary Ranji responded that the education piece is key; some people don't know the limits of using a private vendor for checks. The Task Force needs to think about its charge and how to address these issues. A question was raised about the possibility of informing parents about questions they might ask of camps or others. Parents often choose care for reasons such as how close to home and may not know the questions to ask of a provider. A suggestion was also put forward to acknowledge some of the programs in the state focused on educating adults and youth about personal safety. These include Stewards of Children and the Prevent Child Abuse personal safety programs. Even with the best background checks system, education of adults and children is still necessary.

6. Next Steps

Secretary Ranji concluded the meeting and stated that some of the issues raised today will be brought back to the group for further discussion. The group will also check in on its progress toward making recommendations. An offer was made by Karen DeRasmo to make a presentation about Stewards of Children, which is focused on prevention. An additional suggestion was made that it may be worth hearing about the impact of the volume of increase in background record checks. For instance, increases in cost as well as demands on staffing. A suggestion was made that the Controller General's office may be able to help with cost estimates. A final question was raised about whether or not there will be further consideration of having a consolidated background record checks process. Secretary Ranji responded that the group can discuss this option in greater detail. She acknowledged that the first attempt at a one-stop shop is

the dashboard created by DHSS, on which the Task Force received a presentation at a prior meeting.

7. Public Comment

None.

8. Adjournment

The next meeting date for the Task Force is Thursday, July 17, 2014. The meeting will be held 9:00-11:00am in the 2nd Floor Senate Hearing Room at Legislative Hall.